



# PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION  
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DA 99-556  
March 19, 1999

## AUCTION OF C, D, E, AND F BLOCK BROADBAND PCS LICENSES

### Additional Qualified Bidder

#### Report No. AUC-22-I

This Public Notice identifies an additional applicant, Wireless II, L.L.C., that has been found qualified to bid in Auction No. 22, scheduled to begin on Tuesday, March 23, 1999.<sup>1</sup> The Commission has updated the FCC Form 175 database and electronic bidder cross reference file to reflect this change.

**Due Diligence.** Bidders are reminded that they should continue to conduct due diligence examinations regarding incumbents and other legal developments with respect to the licenses for which they bid during the course of the auction.<sup>2</sup> Bidders should also be aware that the Commission recently received the following three filings:

- Omnipoint Corporation, *Application for Review* (filed March 15, 1999);
- *Mountain Solutions, LTD, Inc. v. FCC*, D.C. Cir. No. 99-1107 (Emergency Motion for

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<sup>1</sup> See letter from Amy J. Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, to David L. Nace, Lukas, Nace, Gutierrez & Sachs, attorney for Wireless II, L.L.C., DA 99-555 (March 19, 1999) (granting Wireless II, L.L.C.'s request for waiver of Commission rules); letter from David L. Nace, Lukas, Nace, Gutierrez & Sachs, attorney for Wireless II, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau (March 19, 1999) (requesting waiver of Commission rules).

<sup>2</sup> See "Auction of 356 Broadband PCS Licenses; Qualified Bidders," *Public Notice*, DA 99-482, at 7 (rel. March 10, 1999); "Auction of C, D, E, and F Block Broadband PCS Licenses; Status of Applications to Participate in the Auction; Clarification of Payment Issue Related to Licenses Subject to Pending Proceedings," *Public Notice*, DA 99-375 at 3-5 (rel. February 24, 1999); "C, D, E, & F Block Broadband PCS Auction; BTA -- Basic Trading Area; March 23, 1999," *Bidder Information Package* at Tab B, 105-07; "Auction of C, D, E, and F Block Broadband PCS Licenses; Notice and Filing Requirements for Auctions of C, D, E, and F Block Broadband Personal Communications Services Licenses Scheduled for March 23, 1999; Minimum Opening Bids and Other Procedural Issues," *Public Notice*, DA 98-2604 at 4-7 (rel. December 23, 1998).

Administrative Stay or Other Injunctive Relief filed March 12, 1999);

- Gloria Borland Hawaii PCS, Inc., *Petition for Extraordinary Relief* (filed March 4, 1999).

For additional information regarding this *Public Notice*, please contact Jeff Garretson, Auctions Operations Branch, Auctions and Industry Analysis Division, at (202) 418-0660, or Audrey Bashkin, Legal Branch, Auctions and Industry Analysis Division, at (202) 418-0660.

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David L. Nace, Esq.  
Lukas, Nace, Gutierrez & Sachs  
1111 Nineteenth St., N.W., 12th Floor  
Washington, D.C. 20036

Dear Mr. Nace:

This letter responds to your waiver request filed on behalf of Wireless II, L.L.C. ("WII").<sup>1</sup> WII requests a waiver of the requirement that it resubmit its application for Auction No. 22 no later than March 3, 1999, 5:30 p.m. (EST). In effect, WII seeks to correct its timely resubmitted application (FCC Form 175).<sup>2</sup> WII's original and resubmitted applications contained inconsistencies identifying the applicant as both a consortium and Limited Liability Corporation ("LLC"), in violation of Sections 24.709, 24.712, 24.717 and 24.720 of the Commission's Rules.<sup>3</sup> In requesting this waiver, WII argues that it had a reasonable, albeit mistaken, belief that its resubmission qualified under the Commission's Rules due to previous Wireless Telecommunications Bureau ("Bureau") rulings.<sup>4</sup>

In order to obtain a waiver of the Commission's Rules, WII must show "(i) that the underlying purpose of the rule will not be served, or would be frustrated, by its application in the particular case, and that grant of the waiver is otherwise in the public interest; or (ii) that the unique facts and circumstances of a particular case render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest."<sup>5</sup> For the reasons cited below, we find that WII's *Letter* demonstrates unique facts and circumstances that meet the Commission's criteria for obtaining a waiver, and accordingly, we will permit WII to participate in Auction No. 22.

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<sup>1</sup> See Letter from David L. Nace, Attorney for Wireless II, L.L.C., to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission (March 19, 1999) ("*Waiver Letter*").

<sup>2</sup> *Id.*

<sup>3</sup> 47 C.F.R. §§ 24.709, 24.712, 24.717, and 24.720. See also, Application of Wireless II, L.L.C., FCC Form 175, submitted February 12, 1999; FCC Form 175 Profile Page and Exhibit A submitted by Wireless II, L.L.C., March 3, 1999.

<sup>4</sup> *Waiver Letter* at 2.

<sup>5</sup> See 47 C.F.R. § 1.925; *Wait Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

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WII is comprised of six members organized as an LLC under the laws of Nebraska.<sup>6</sup> WII's initial short-form application (FCC Form 175) for Auction No. 22 classified it as an LLC, but in its Exhibit C to the application, it supported its claim to a bidding credit as a very small business based on its status as a consortium of a very small business.<sup>7</sup> After an initial legal review of WII's application, the Bureau notified WII that it had failed to comply with the consortium requirements of Sections 24.709, 24.712, and 24.717.<sup>8</sup> In response to this information and a February 25, 1999 conversation with Bureau staff, WII resubmitted its application to indicate its status as a consortium, but failed to alter any exhibits to further comply with the consortium standards. In effect, WII remained an LLC in structure but identified itself, and requested bidding credits, as a consortium. Accordingly, the Bureau rejected WII's resubmission.

Upon review of WII's *Waiver Letter*, we find that the inconsistencies contained in its application are not of sufficient magnitude to disqualify WII from participation in Auction No. 22. WII's primary error was in requesting a 25 percent bidding credit as a very small business, when it actually qualifies for a 15 percent small business bidding credit under the Commission's Rules.<sup>9</sup> We find that WII is qualified to participate in the auction on the face of its application. Moreover, it has shown good faith by adhering to the Commission's deadline for resubmission and by submitting its upfront payment. Accordingly, a grant of WII's waiver request is warranted under the totality of the circumstances of this case and further serves the public interest.

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<sup>6</sup> Application of Wireless II, L.L.C., FCC Form 175, Exhibit A, submitted March 3, 1999.

<sup>7</sup> Application of Wireless II, L.L.C., FCC Form 175, submitted February 12, 1999.

<sup>8</sup> See letter from Louis Sigalos, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, to Randy Blair, Wireless II, L.L.C. (February 24, 1999). See also, "Auction of C, D, E and F Block Broadband PCS Licenses; Status of Applications to Participate in Auction; Clarification of Payment Issue Relating to Licenses Subject to Pending Proceeding," *Public Notice*, DA 99-375 (rel. February 24, 1999).

<sup>9</sup> The aggregate of the 1996-1998 average annual gross revenues of the six members of WII is approximately \$16.9 million, well within the range of a qualified small business entity. See 47 C.F.R. § 24.720(b).

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Therefore, WII's request for a waiver of the Commission's Rules is granted. By grant of this waiver, the Bureau will modify WII's application to classify it as an LLC qualified to receive bidding credits as a small business under § 24.720(b) of the Commission's Rules.<sup>10</sup> This action is taken under delegated authority pursuant to Section 0.331 of the Commission's Rules.<sup>11</sup>

Sincerely,

Amy J. Zoslov  
Chief, Auctions and Industry Analysis Division  
Wireless Telecommunications Bureau

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<sup>10</sup> 47 C.F.R. § 24.720(b).

<sup>11</sup> 47 C.F.R. § 0.331.